United States Patent and Trademark Office

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,100	11/03/2003	Yutaka Kaneko	81784.0289	2810

26021	7590	06/12/2006

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EXAMINER
PATEL, GAUTAM

ART UNIT	PAPER NUMBER
2627	

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<table>
<tr>
<td rowspan="2">Office Action Summary</td>
<td>Application N .</td>
<td>Applicant(s)</td>
</tr>
<tr>
<td>10/700,100</td>
<td>KANEKO, YUTAKA</td>
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<td></td>
<td>Examiner</td>
<td>Art Unit</td>
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<td>Gautam R. Patel</td>
<td>2627</td>
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-- The MAILING DATE of this c mmunication appears on the cover sheet with the corresp ndence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _08 March 2005_.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-11_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-11_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☒ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-11 are pending for the examination.

Priority

2.   Receipt is acknowledged of papers submitted under 35 U.S.C. § 119(a)-(d), which papers have been placed of record in the file.

Drawings/Objection

3.   The drawings are objected for following reasons:

The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, " a reading section and an access restricting section " must be shown or the feature cancelled from the claim.

No new matter should be entered.

Applicant is required to submit a proposed drawing correction in response to this Office Action. Any proposal by the applicant for amendment of the drawings to cure defects must consist of following:

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment, and may be *accompanied by a marked-up copy of one or more of the figures being amended, with annotations*. Any replacement drawing sheet *must be identified in the top margin as "Replacement Sheet"* and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. *Any marked-up (annotated) copy showing changes must be labeled "Annotated Marked-up Drawings" and accompany the replacement sheet in the amendment (e.g., as an appendix).*

a proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. Correction is/are required.

Correction may not be held in abeyance.

Claim Rejections - 35 U.S.C. § 101

4.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter.

The claims 9-11 are drawn to a "program" *per se* as recited and as such is non-statutory subject matter. See MPEP § 2106.IV.B.1.a. data structures not claimed as embodied in computer readable medium are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationship between that data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. in contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationship between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of programs are not physical "things". they are neither computer components nor statuary processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

When nonfunctional descriptive material is recorded on some computer-readable medium, in computer or an electromagnetic carrier signal, it is non statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material; i.e. abstract idea, stored in a computer-readable medium, in a computer or on an electromagnetic carrier signal **does not make it statutory**. See Diehr, 45 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in Benson were unpatentable as abstract idea because {[t]he sole particle application of the algorithm was in connection with programming of a general purpose computer.").

NOTE: **A program stored on a computer readable medium and also program that causes computer to actually perform [or execute] the process steps with either <u>tangible results or physical transformation</u> is required in order to be statutory.**

Claim Rejections - 35 U.S.C. § 112

5.   The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-11 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9-11, are confusing and unclear. It is not clear what the steps of reading security information and determining correct security information are doing and achieving what kind of concrete results.

Claim Rejections - 35 U.S.C. § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8 are rejected under 35 U.S.C. § 102(e) as being anticipated by Van Den Enden et al., US. patent 6,765,852 (hereafter Van Den Enden).

As to claim 1, Van Den Enden discloses the invention as claimed [see Figs. 1-5] including a reading section and an access restricting section, comprising:

a reading section [fig. 5, unit 34] for reading the data and the security information from the optical disk [col. 7, lines 42-50]; and

an access restricting section [fig. 5, unit 49 & 27] for restricting the reading of data, based on the security information associated with the data to be read, during when the data is read from

the optical disk using the reading section, wherein a comparison is made among fragments of the security information read from the plurality of locations on the optical disk to be read, and the access restricting section restricts the reading of the data to be read based on a security information fragment with the highest frequency [col. 3, lines 40-52; & col. 7, line 5 to col. 8, line 26].

7.   The aforementioned claim 2, recites the following elements, inter alia, disclosed in Van Den Enden:

the security information is information represented by a string of consecutive bits, and the access restricting section compares, for each column of bits, bit values read as the security information from the plurality of locations, and selects a bit value with the highest frequency in each column of bits as a correct bit value in the column of bits [col. 3, lines 40-52; & col. 7, line 5 to col. 8, line 26].

8.   The aforementioned claim 3, recites the following elements, inter alia, disclosed in Van Den Enden:

an error detection section for detecting an error frequency in the data read by the reading section, wherein the access restricting section corrects the security information based on the data error frequency obtained by the error detection section. [col. 3, line 64 to col. 4, lie 12; col. 5, lines 58-65 & col. 6, lines 36-67].

9.   The aforementioned claim 4, recites the following elements, inter alia, disclosed in Van Den Enden:

An optical disk drive, comprising a writing section for writing data and security information associated with the data onto an optical disk, wherein identical security information is written at a plurality of locations on the optical disk [col. 5, line 66 to col. 6, line 13 and fig. 5].

10.   The aforementioned claim 5, recites the following elements, inter alia, disclosed in Van Den Enden:

An optical disk for storing data and security information associated with the data, wherein identical security information is written at a plurality of locations. disk [col. 5, line 66 to col. 6, line 13 and fig. 5].

11.   The aforementioned claim 6, recites the following elements, inter alia, disclosed in Van Den Enden:

reading the security information associated with the data subject to security control from the plurality of locations on the optical disk [col. 7, lines 42-50]; and

determining correct security information by comparing fragments of the security information read from the plurality of locations and then by selecting a security information fragment with the highest frequency, wherein the correct security information is used in processing of the data subject to security control [col. 3, lines 40-52; & col. 7, line 5 to col. 8, line 26].

12.   The aforementioned claim 2, recites the following elements, inter alia, disclosed in Van Den Enden:

the security information is information represented by a string of consecutive bits, and the correct security information is determined by comparing, for each column of bits, bit values read from the plurality of locations and then by selecting a bit value with the highest frequency in each column of bits as a correct bit value in the column of bits [col. 3, lines 40-52; & col. 7, line 5 to col. 8, line 26].

13.   The aforementioned claim 8, recites the following elements, inter alia, disclosed in Van Den Enden:

the step of detecting an error frequency in the data stored on the optical disk, wherein the correct security information is determined based on the error frequency [col. 3, line 64 to col. 4, lie 12; col. 5, lines 58-65 & col. 6, lines 36-67].

14.   A search based on the best understanding of the claims has been made to find the most pertinent art, but no statement about invention will be appropriate at this time regarding the

allowableness of claims 9-11 and no art rejection will be made in this office action regarding the

claims 9-11, due to the speculation required to interpret the claims because of their indefiniteness

under 35 U.S.C. 112, 1st and 2nd paragraphs as noted above (see In re Steele, 134 USPQ 292).

Other prior art cited

15.   The prior art made of record and not relied upon is considered pertinent to applicant's
disclosure.

   a)   Fite et al. (US. Patent 5,541,904).

Contact information

16.   Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Gautam R. Patel whose telephone number is 571-272-7625. The
examiner can normally be reached on Monday through Thursday from 7:30 to 6.

        The appropriate fax number for the organization (Group 2650) where this application or
proceeding is assigned is 571-273-8300.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Mr. Dwayne Bost, who can be reached on (571) 272-7023.

        Any inquiry of a general nature or relating to the status of this application should be
directed to the Electronic Business Center whose telephone number is 866-217-9197 or the
USPTO contact Center telephone number is (800) PTO-9199.

                                                        Gautam R. Patel
                                                        Primary Examiner
                                                        Group Art Unit 2627

                                                        June 7, 2006